

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

DIANA STUBBOLO,	)	
	)	
Employee/Grievant,	)	
	)	<b>DOCKET No. 10-03-469</b>
v.	)	
	)	<b>DECISION AND ORDER</b>
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Employer/Respondent.	)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on February 23, 2011 at the Delaware Public Service Commission Conference Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** Martha K. Austin, Chair, John F. Schmutz, Victoria D. Cairns, and Jacqueline Jenkins, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

**APPEARANCES**

W. Michael Tupman  
Deputy Attorney General  
Legal Counsel to the Board

Frederick Schrank  
Deputy Attorney General  
on behalf of the Department of Transportation

## **BACKGROUND**

A hearing was convened by the Merit Employee Relations Board on Wednesday, February 23, 2011 to hear the appeal of Diana Stubbolo (“Grievant”) against the Department of Transportation (“Department”). The Grievant was employed by the Department in the position of Consultant Control Coordinator for the period of approximately January 11 through February 5, 2010. She alleges she was terminated in violation of Merit Rule 2.0, Non-Discrimination:

**2.1 Discrimination in any human resource action covered by these rules or Merit system law because of race, color, national origin, sex, religion, age, disability, sexual orientation, or other non-merit factors is prohibited.**

Prior to the February 23, 2011 hearing before the Board, a Prehearing Order was issued by the Board’s Chair on January 18, 2011, as a result of a prehearing conference convened by MERB’s counsel on January 12, 2011. A second prehearing conference was convened by MERB’s counsel on February 15, 2011. Both the grievant and counsel for the Department of Transportation participated in both prehearing conferences.

The hearing in this matter was previously scheduled three times: for August 19, 2010; September 29, 2010; and December 16, 2010. All three hearings were continued at the Grievant’s request, and without objection from the Department. When the third continuance was granted on November 3, 2010, the parties were advised by letter that the hearing was rescheduled for February 23, 2011. The Grievant’s fourth request for continuance of the hearing was denied by the Board’s Chair on January 31, 2011. Hearing notices were prepared and posted on February 2, 2011.

The parties were advised in a letter dated January 31, 2011 that the hearing would be conducted as scheduled and reminded that their witness statements and exhibits (as required by MERB Rule 13) were to be submitted on or before February 11, 2011. The submission date was

subsequently extended to February 14. The parties were advised failure to submit these documents “may result in dismissal of the appeal” in an email from MERB counsel on February 14.


Exhibits and witness statements were submitted by the Department on February 14; no exhibits or witness statements were received from the Grievant.

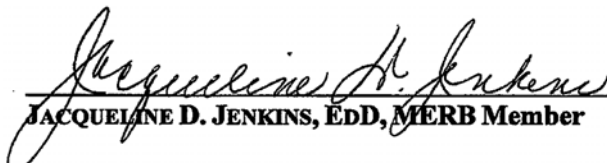
The Grievant was not present when the hearing was convened at 9:07 a.m. on February 23, 2011. The Board waited until 9:25 a.m. The Grievant failed to appear to be heard and to present evidence in support of her appeal. Consequently, this appeal is dismissed.

### **DECISION AND ORDER**

It is this **4th** day of **March**, 2011, by a unanimous vote of 4-0, the appeal is dismissed as the Grievant has failed to appear to be heard and to present her evidence.

  
MARTHA K. AUSTIN, MERB Chairwoman

  
JOHN F. SCHMUTZ, MERB Member

  
JACQUELINE D. JENKINS, EDD, MERB Member

  
VICTORIA D. CAIRNS, MERB Member

## **APPEAL RIGHTS**

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee's being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: **March 4**, 2011

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

OMB/HRM

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